

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application by  
Minnesota Power for Authority to  
Increase Rates for Electric Service in  
Minnesota

**ORDER ON MOTION TO STRIKE  
AND TO SUPPLEMENT THE RECORD**

This matter came before Administrative Law Judge Kathleen D. Sheehy on the Motion of Minnesota Power (the Company) to Strike Portions of the Initial Brief of Office of Attorney General, Residential and Small Business Utilities Division (OAG), and to Supplement the Record. The Company's Motion was filed on July 15, 2010. The OAG responded to the motion on July 26, 2010. The motion record closed that day.

Christopher D. Anderson, Associate General Counsel; and Sam Hanson, Thomas Bailey, and Elizabeth M. Brama, Briggs and Morgan, appeared for Minnesota Power.

Ronald M. Giteck, Assistant Attorney General, appeared for the OAG.

Based on all of the files and proceedings herein, and for the reasons contained in the Memorandum attached hereto, the Administrative Law Judge makes the following:

**ORDER**

The Company's Motion to Strike is DENIED and its Motion to Supplement the Record is GRANTED.

Dated: August 16, 2010

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

## **MEMORANDUM**

The Company's motions were received on July 15, 2010, a day after the close of briefing in this docket. The motions asked the Administrative Law Judge (ALJ) to strike certain portions of the OAG's Initial Brief, and any related discussion in the OAG's Reply Brief, that relied on evidence not entered into the record. The evidence in question consisted of the Company's responses to certain OAG Information Requests (IRs). The Company further moved to supplement the record with some e-mail correspondence so that a different section of the OAG's brief could "be read with a proper understanding of its full context."

In its response, the OAG recommended, without a formal motion, that the IRs be accepted as late-filed exhibits for the limited purposes discussed in the OAG's Initial Brief. The OAG had no objection to the Company's motion to supplement the record with the e-mail exchange.

The Company's motion to strike portions of the brief is denied. The brief is merely argument, not evidence. While the argument does make reference to documents that are not in the record, that will affect the weight given to the argument, but does not make the brief "inadmissible."

With regard to the OAG's informal request to receive these IRs as late-filed exhibits, the ALJ notes that these exhibits were available to be offered in evidence during the hearing but were not offered. Consequently, the ALJ declines to adopt the OAG's recommendation that the IRs be considered late-filed exhibits.

Finally, the OAG states it does not object to supplementing the record with the e-mails pursuant to the Company's motion. Because those e-mails were created following the evidentiary hearing and could not have been offered during the hearing, but do shed light on arguments made by the OAG in its Initial Brief, it is appropriate to grant the Motion to Supplement the record with the materials attached as Ex. 9 to the Affidavit of Elizabeth M. Brama (July 14, 2010).

**K.D.S.**